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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,463	10/21/2003	Gabe Coscarella	LAMA121881	7322
26389 7590 01/05/2007 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/691,463	COSCARELLA, GABE	
	Examiner	Art Unit	
	John Kreck	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Draper (U.S. Patent number 214,894).

Draper shows a cleanout with drainage capabilities comprising a hollow housing (B) having a sidewall, top access opening (near P); and bottom access opening (near D); and the sidewall having a plurality of drainage openings (col. 2, lines 4 and 5); and a removable closure (P) as called for in claim 1.

Regarding independent claim 7:

Draper shows a cleanout with drainage capabilities comprising a hollow housing (B) having a sidewall, top access opening (near P); and bottom access opening (near D); and the sidewall having a plurality of drainage openings (col. 2, lines 4 and 5); a removable closure (P); and the cleanout being buried with the bottom opening attached to an underground conduit (A) with the removable closure accessible above ground as called for in claim 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Draper in view of Blendermann (U.S. Patent number 3,469,698).

Draper teaches the first body (B) but lacks explicit disclosure of the "slots" and the second body.

Blendermann teaches a similar drainage structure, which includes a first and second body with overlapping slots (e.g. figure 9, column 4, lines 4-19). Blendermann discloses that the first and second bodies with overlapping slots provides adjustability of flow. The courts have held that provision of adjustability is not a patentable advance, thus the modification of Draper with a known structure (first and second body with overlapping slots) for providing adjustability would have been obvious to one of ordinary skill in the art at the time of invention. See *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

With regards to the rotatability and axial movement limitations of claims 3 and 4, see col. 4, lines 4-19 of Blendermann.

Regarding independent claim 5:

Draper shows a cleanout with drainage capabilities comprising first body (B) having a sidewall, top access opening (near P); and bottom access opening (near D);

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and the sidewall having a plurality of drainage openings (col. 2, lines 4 and 5); and a removable closure (P). Draper lacks explicit disclosure of the "slots" and the second body rotatably engaged.

Blendermann teaches a similar drainage structure, which includes a first and second body with overlapping slots (e.g. figure 9, column 4, lines 4-19). Blendermann discloses that the first and second bodies rotatably engaged with overlapping slots provides adjustability of flow. The courts have held that provision of adjustability is not a patentable advance, thus the modification of Draper with a known structure (first and second body with overlapping slots) for providing adjustability would have been obvious to one of ordinary skill in the art at the time of invention. See *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

### ***Allowable Subject Matter***

3. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claim 10 is allowed.
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fleming (U.S. Patent number 1,731,617) teaches a drain with similar structure; Te-Shin (U.S. Patent number 5,431,815) and Shelander (U.S. Patent number 3,638,431) teach similar clean-out structure, but lack the top cover. Janesky (U.S. Patent number 5,970,664) teaches a window well gravel filter, but the prior art fails

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to suggest a window well gravel filter with a housing having apertures a closure closing the top, and attached to an underground conduit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042.

The examiner can normally be reached on Mon-Thurs 530am-2pm; Fri: telework.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John Kreck  
Primary Examiner  
Art Unit 3673

3 January 2007